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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/672,730 | 09/25/2003 | Rod Ross | 155615-0040 | 9438 |

7590 04/19/2007
MED-LOGICS, Inc.
26061 Merit Circle, Suite 102
Laguna Hills, CA 92653

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| EXAMINER |
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NGUYEN, VI X

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| ART UNIT | PAPER NUMBER |
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3734

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS | 04/19/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/672,730

Applicant(s)

ROSS ET AL.

Examiner

Victor X. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,3,5,9-11,13,33-36 and 41-43 is/are pending in the application.
- 4a) Of the above claim(s) 6-8,14,15 and 37-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,3,5,9-11,13,33-36,41-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 2,3,5,9-11,13,33-36 and 41-43 are rejected under 35 U.S.C. 102(e) as being anticipated by Dybbs (6,228,099).

1. Dybbs discloses a blade assembly that can be assembled into a microkeratome, including: a blade (98) has a cutting edge (102), a rear edge (see attached figure where all yellow mark is characterized as a rear edge, the rear edge has a notch at the opening of blade 98), and a pair of side edges (occurs at either side of element 98), where a blade holder (96) that has a reference surface and is loaded into the inner cavity, and where the blade holder reference surface (106) is capable of pressing into and in contact with the rear edge of the blade and is capable of attaching the blade holder to the blade. At best seen in fig. 4, Dybbs can clearly disclose engaging the blade 98 to the blade holder 96 via an opening 122 in the blade that receives the protrusion 120 in the blade holder as recited in claim 9, and where the a blade holder has a slot that receives the pin (135) as recited in claim 41, Regarding the intended use of a blade holder that has a blade holder reference surface to enable calibrating the blade to fix a distance between the blade holder reference surface and the cutting edge; a recitation of the intended use of the claimed invention

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must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In the instant case, the blade of Dybbs would have been capable of performing the use as claimed, and where the rear edge has a plurality of fingers (occur at either side of element 102, and where nothing is the specification can prevent that element 102 can be characterized as any fingers which are able to press into the holder slots (the slots occur at the opening 120 and 114) and that can be added as the cutting edge) as recited in claims 33, 42-43, and where the blade holder is coupled to the blade by a frictional fit, and where the blade can pivot relative to the blade holder, and where the blade holder also has an outer groove (fig.4).

Response to Arguments

2. Applicant's arguments filed 8/16/2006 have been fully considered but they are not persuasive. In response to applicant's argument that the Dybbs reference does not teach a coupling means for coupling the rear edge of the blade to the blade holder. In fact, Dybbs clearly discloses in fig. 4 engaging the blade 98 to the blade holder 96 via an opening 122 in the blade that receives the protrusion 120 in the blade holder as recited in claim 9. Applicant's arguments with regard to that Dybbs's device does not teach a rear edge having a plurality of fingers that are pressed into the blade holder slots. In fact, Dybbs teach that where the rear edge has a plurality of fingers (occur at either side of element 102, and where nothing is the specification can prevent that element 102 can be characterized as any fingers which are able to press into the holder slots (the slots occur at the opening 120 and 114) and that can be added as the cutting

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edge. Accordingly, the above noted reference is still considered to read on the claimed limitations of the claims noted.

Conclusion

3. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victor X Nguyen
Examiner
Art Unit 3734



VN
4/16/2007



MICHAEL J. HAYES
SUPERVISORY PATENT EXAMINER

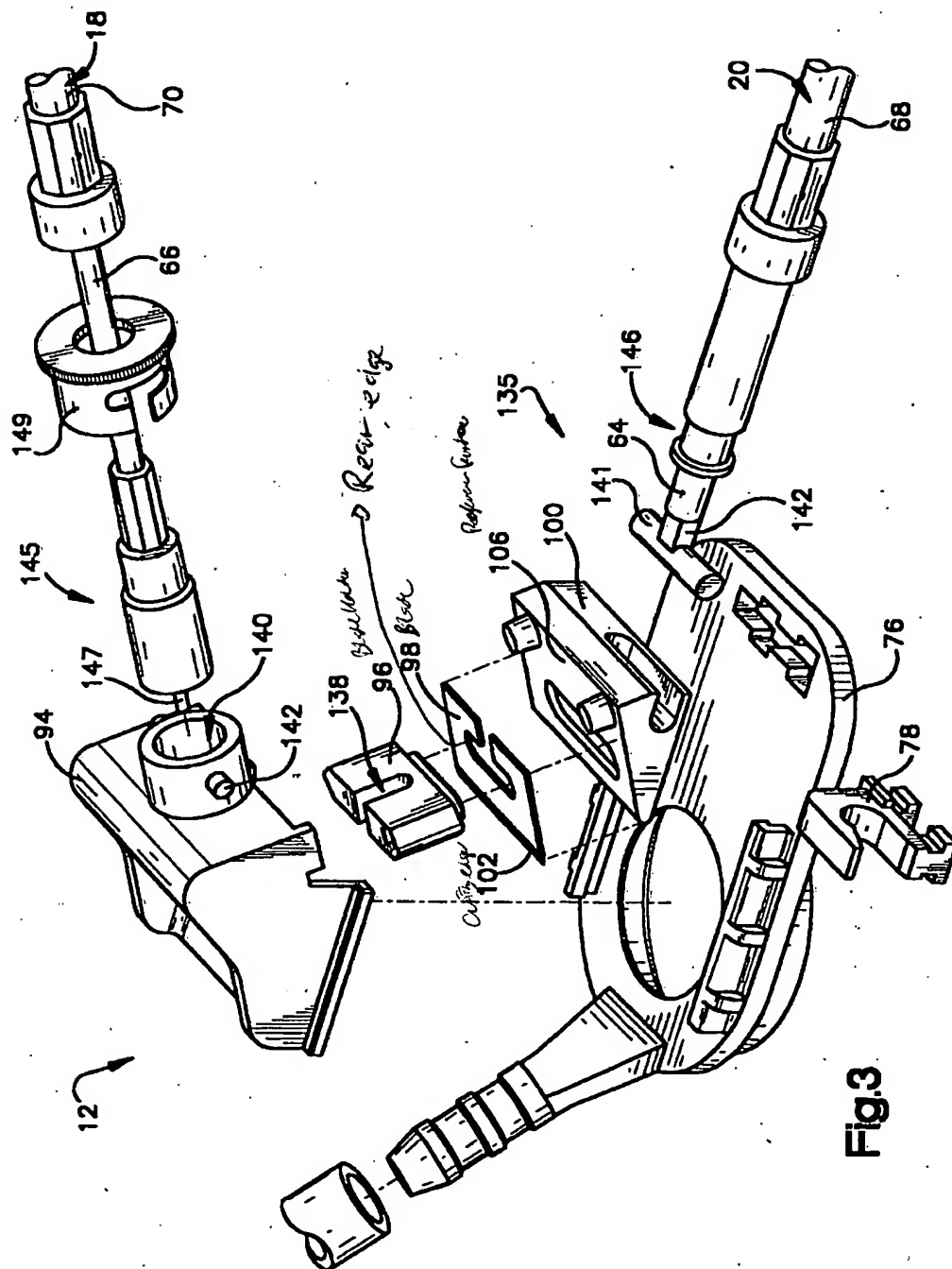


Fig.3